

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

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4
5 HILLCREST INVESTMENTS, LTD., a
6 foreign corporation; HILLCREST PROJECTS,
7 LLC, a foreign limited liability company,

8 Plaintiff,

9 v.

10 CHICAGO TITLE INSURANCE
11 COMPANY, a foreign entity; QUAIL
12 VALLEY WATER DISTRICT, a
foreign entity; 11239, LLC, a foreign
entity; R.A.M.M. CORP., a Nevada
Corporation,

13 Defendants.
14

2:22-cv-00406-RFB-VCF

ORDER

15 Before the Court is Defendant Chicago Title Insurance Company's Motion to Stay Discovery (ECF
16 NO. 29).

17 Defendant Chicago Title Insurance Company ("CTIC") requests to stay discovery pending
18 decision on its motion to dismiss. No opposition has been filed and the time to file an opposition has
19 passed.

20 **I. Relevant Background**

21 This case commenced on March 14, 2022. This matter pertains to the insurance policy issued by
22 Defendant CTIC related to escrow FWKN-TO14000231, and that on or about October 15, 2014, Plaintiff
23 purchased various properties pursuant to the terms and conditions of a settlement agreement dated August
24 27, 2014 (the "Settlement Agreement"). (ECF NO. 1).
25

1 On June 10, 2022, Defendant CTIC filed its motion to dismiss (ECF NO. 12). Defendant CTIC
2 claims that the issues in this case have already been adjudicated in Case No. 2:19-cv-02065 RFB-EJY,
3 naming Chicago Title of Nevada, Inc. (“Chicago Title”—an escrow and title company) as the defendant
4 (“Prior Case”). (ECF NO. 29). CTIC states that it prevailed on summary judgment in the prior case and
5 its motion for attorney fees is pending in case number 2:19-cv-02065 RFB-EJY. CTIC alleges that the
6 complaints in both cases are nearly identical. The only differences between the two complaints, other than
7 formatting, is that Plaintiff has now named CTIC instead of Chicago Title and added other non-related
8 defendants. There is also an added a second cause of action for quiet title/declaratory relief, but Plaintiffs
9 have stipulated that the cause of action is not directed at CTIC. *See* ECF Nos. 7 and 8. Defendant states
10 that Plaintiffs’ claims against CTIC are barred by res judicata and by the applicable statute of limitations.

11 Plaintiff has not filed an opposition to Defendant’s motion to stay discovery. Plaintiff did file a
12 response to Defendant’s motion to dismiss, stating that res judicata does not preclude this action and that
13 while there are similar issues from the prior action, the prior action involved a different entity’s breach of
14 a different agreement – the Escrow Instructions. In the instant action, the issues revolve around the breach
15 of a title insurance policy by the insurer, and that the statute of limitations has been tolled. (ECF NO. 20).

16 **II. LEGAL STANDARD**

17 When evaluating a motion to stay discovery while a dispositive motion is pending, the court
18 initially considers the goal of Federal Rule of Civil Procedure 1. The guiding premise of the Rules is that
19 the Rules “should be construed and administered to secure the just, speedy, and inexpensive determination
20 of every action.” FED. R. CIV. P. 1. It needs no citation of authority to recognize that discovery is
21 expensive. The Supreme Court has long mandated that trial courts should resolve civil matters fairly but
22 without undue cost. *Brown Shoe Co. v. United States*, 370 U.S. 294, 306 (1962). This directive is echoed
23 by Rule 26, which instructs the court to balance the expense of discovery against its likely benefit. *See*
24 FED.R.CIV.P. 26(B)(2)(iii).

25 Consistent with the Supreme Court’s mandate that trial courts should balance fairness and cost,

1 the Rules do not provide for automatic or blanket stays of discovery when a potentially dispositive motion
2 is pending. *Skellerup Indus. Ltd. v. City of Los Angeles*, 163 F.R.D. 598, 600–01 (C.D. Cal. 1995).
3 Pursuant to Federal Rule of Civil Procedure 26(c)(1), “[t]he court may, for good cause, issue an order to
4 protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.”
5 Whether to grant a stay is within the discretion of the court. *Munoz–Santana v. U.S. I.N.S.*, 742 F.2d 561,
6 562 (9th Cir. 1984). The party seeking the protective order, however, has the burden “to ‘show good cause’
7 by demonstrating harm or prejudice that will result from the discovery.” FED. R. CIV. P. 26(c)(1).
8 Satisfying the “good cause” obligation is a challenging task. A party seeking “a stay of discovery carries
9 the heavy burden of making a ‘strong showing’ why discovery should be denied.” *Gray v. First Winthrop*
10 *Corp.*, 133 F.R.D. 39, 40 (N.D.Cal.1990) (citing *Blankenship v. Hearst Corp.* 519 F.2d 418, 429 (9th Cir.
11 1975)).

12 Generally, imposing a stay of discovery pending a motion to dismiss is permissible if there are no
13 factual issues raised by the motion to dismiss, discovery is not required to address the issues raised by the
14 motion to dismiss, and the court is “convinced” that the plaintiff is unable to state a claim for relief. *Rae*
15 *v. Union Bank*, 725 F.2d 478, 481 (9th Cir. 1984); *White v. Am. Tobacco Co.*, 125 F.R.D. 508 (D. Nev.
16 1989) (citing *Wood v. McEwen*, 644 F.2d 797, 801 (9th Cir. 1981) cert. denied, 455 U.S. 942 (1982).
17 Typical situations in which staying discovery pending a ruling on a dispositive motion are appropriate
18 would be where the dispositive motion raises issues of jurisdiction, venue, or immunity. *TradeBay, LLC*
19 *v. Ebay, Inc.*, 278 F.R.D. 597, 600 (D. Nev. 2011).

20 Courts in the District of Nevada apply a two-part test when evaluating whether a discovery stay
21 should be imposed. *Id.* (citations omitted). First, the pending motion must be potentially dispositive of the
22 entire case or at least the issue on which discovery is sought. *Id.* Second, the court must determine whether
23 the pending motion to dismiss can be decided without additional discovery. *Id.* When applying this test,
24 the court must take a “preliminary peek” at the merits of the pending dispositive motion to assess whether
25 a stay is warranted. *Id.* The purpose of the “preliminary peek” is not to prejudge the outcome of the motion

1 to dismiss. Rather, the court's role is to evaluate the propriety of an order staying or limiting discovery
2 with the goal of accomplishing the objectives of Rule 1.

3 Under LR7-2(d), the failure of an opposing party to file points and authorities in response to any
4 motion, except a motion under Fed. R. Civ. P. 56 or a motion for attorney's fees, constitutes a consent to
5 the granting of the motion.

6 **III. Discussion**


7 No opposition has been filed and the time to file an opposition has passed. It would seem as though
8 Plaintiff has consented to the granting of the instant motion.

9 Defendant's motion to stay is granted on the merits. Here, no factual issues are raised by the motion
10 to dismiss, and discovery is not required to address the issues raised by the motion to dismiss. After a
11 "preliminary peek" and in light of the goals of Rule 1 to "secure the just, speedy, and inexpensive"
12 determination of all cases, the Court finds that the motion to dismiss may have merit and Defendant has
13 demonstrated good cause to stay discovery.

14 Accordingly, and for good cause shown,

15 IT IS HEREBY ORDERED that Defendant Motion to Stay Discovery (ECF NO. 29) is
16 GRANTED. In the event resolution of Defendants' motion to dismiss (ECF No. 12) does not result in the
17 disposition of this case, the parties must file a new joint discovery plan within 21 days of the issuance of
18 the order resolving that motion.

19
20 DATED this 13th day of October 2022.

21
22 
23 CAM FERENBACH
24 UNITED STATES MAGISTRATE JUDGE
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